

Changes to the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013

Revised regulations - laid in Parliament on 11 March 2013 - put beyond doubt the Government's strong commitment that competition in the health service should always be used in the interests of patients.

The previous regulations went no further than the set of procurement guidelines issued in March 2010. However, concerns were raised about their precise wording. The Government has listened carefully to those concerns and have improved the drafting of the regulations so there can be no doubt about how they apply.

The changes to the regulations make clear that:

- The position remains the same as now - there is no requirement to put all contracts out to competitive tender. This means that commissioners are able to offer contracts to a single provider where only that provider is capable of providing the services.
- Monitor – the regulator - has no power to force the competitive tendering of services. Decisions about how and when to introduce competition to improve services are solely up to doctors and nurses in clinical commissioning groups.
- Competition should not trump integration - commissioners are free to use integration where it is in the interest of patients.

The changes to the regulations are as follows:

Regulation 2 states that the 'objective' of procurement is securing the needs of patients and improving quality and efficiency. We have made it clear that providing services in an integrated way is a way of achieving that objective.

Regulation 3(5) now requires commissioners to record how their awarding of a contract complies with the duties on them to secure integration.

In **Regulation 5**, we have removed the words that inadvertently created the impression that there were only very narrow circumstances in which commissioners could award a contract without a competition. Monitor's guidance on the regulations will make clear that we are continuing the same approach as now under the Principles and Rules for Cooperation and Competition.

Regulation 10 prohibits anti-competitive behaviour unless it is in the interests of patients. We have amended the regulation to make clear that 'behaviour in the interests of patients' may include services being provided in an integrated way or co-operation between providers in order to improve the quality of services. This reflects the Government's firm view that competition is a means to improving services and not an end in itself.

Regulation 10(2) has also been amended to make clear that its scope relates only to 'terms or conditions' that restrict competition. The purpose of this is to provide extra clarity on the policy intention and consistency of the wording with regulation 14. We have also amended regulation 10(2) to make clear that these questions of anti-competitive terms or conditions would not be considered in isolation from the objective of improving quality and efficiency, and securing the needs of patients.

Regulation 15 has been amended to clarify, for the avoidance of doubt, that Monitor does not have the power to direct a commissioner to hold a competitive tender.